

A. W. Schlesinger Geriatric Center, Inc. and Service Employees International Union Local 706, AFL-CIO. Cases 23-CA-8460, 23-CA-8519, and 23-RC-4974

September 21, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On February 19, 1982, Administrative Law Judge Jay R. Pollack issued the attached Decision in Cases 23-CA-8460 and 23-CA-8519. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

On April 14, 1982, the Regional Director for Region 23 issued a Supplemental Decision, Order, and Direction of Second Election in Case 23-RC-4974¹ in which he set aside an election conducted on May 28, 1981. The Regional Director sustained certain objections to conduct affecting the results of the election filed by the Petitioner, Service Employees International Union, Local 706, AFL-CIO, which were based on the same conduct the Administrative Law Judge found to be unlawful in Cases 23-CA-8460 and 23-CA-8519. Thereafter, the Respondent filed a timely request for review of the Regional Director's Supplemental Decision, requesting that the Board stay the Regional Director's direction of a second election pending issuance of the Board's Decision in Cases 23-CA-8460 and 23-CA-8519. On May 13, 1982, the Board granted the Respondent's request for review, stayed the Regional Director's Direction of Second Election, and, *sua sponte*, consolidated Case 23-RC-4974 with Cases 23-CA-8460 and 23-CA-8519.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as modified below,² and to adopt his recommended Order, as so modified.³

¹ The election was conducted pursuant to a Decision and Direction of Election issued by the Regional Director on April 29, 1981. The tally was: 87 for, and 104 against the petitioner; there were 2 void, and 5 challenged ballots.

² In the absence of affirmative evidence that off-duty employees attended meetings of the Schlesinger Geriatric Center Employee Information Committee held on the Respondent's property, the Administrative Law Judge's conclusion that off-duty employees "must have" attended such meetings is speculative. We therefore do not adopt the Administrative Law Judge's finding that the Respondent disparately enforced its

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified herein, and hereby orders that the Respondent, A. W. Schlesinger Geriatric Center, Inc., Beaumont, Texas, its officers, agents, successors, and assigns, take the action set forth in said recommended Order, as so modified:

In light of our agreement with the Administrative Law Judge that the Respondent violated Section 8(a)(1) by promulgating, maintaining, and discriminatorily enforcing an overly broad no-distribution rule; by promulgating and maintaining an overly broad rule prohibiting access to off-duty employees; and by suggesting, soliciting, and encouraging the formation of an antiunion committee, we shall vacate our order staying the Regional Director's Direction of Second Election in Case 23-RC-4974.

1. Substitute the following for paragraph 1(b) of the recommended Order:

"(b) Promulgating or maintaining any overly broad rule prohibiting off-duty employees from solicitation or distribution relating to matters involving the exercise by employees of their rights under Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the Board's May 13, 1982, order staying the Regional Director's Direction of Second Election in Case 23-RC-4974 be, and it hereby is, revoked.

otherwise unlawful rule denying off-duty employees access to outside, nonworking areas.

³ Chairman Van de Water joins his colleagues in finding that the Respondent promulgated and maintained an overly broad no-distribution rule which is violative of the Act. By so doing, he does not imply that off-duty employees are entitled to access to the Employer's premises 24 hours a day. A reasonable rule limiting off-duty employees to access to the Employer's premises for 30 minutes before and 30 minutes after shift changes would accommodate employees' Sec. 7 rights without unreasonably interfering with the Employer's property rights. Cf. *GTE Lenkurt, Incorporated*, 204 NLRB 921 (1973). While not adopting the broad ban expressed therein as to off-duty employees, neither does he adopt the view expressed in *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976), that an off-duty employee has unlimited access to the outside premises such as parking lots, gates, and other outside nonworking areas and any rule purporting to limit access is deemed invalid.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT promulgate, maintain, or discriminatorily enforce any overly broad rule prohibiting at any time or any place at the geriatric center the distribution of literature relating to matters involving exercise by employees of their rights under Section 7 of the Act.

WE WILL NOT promulgate or maintain any overly broad rule prohibiting off-duty employees from solicitation or distribution relating to matters involving the exercise by employees of their rights under Section 7 of the Act.

WE WILL NOT suggest, solicit, or encourage employees to form a committee to disseminate information about the Union or to campaign against the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

A. W. SCHLESINGER GERIATRIC
CENTER, INC.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: I heard these cases in Beaumont, Texas, on October 29, 1981.¹ The charge in Case 23-CA-8460 was filed on April 6 by Service Employees International Union Local 706, AFL-CIO (the Union). On May 18, the Acting Regional Director for Region 23 of the National Labor Relations Board issued a complaint and notice of hearing alleging

that A. W. Schlesinger Geriatric Center, Inc. (Respondent) violated Section 8(a)(1) of the National Labor Relations Act, as amended (the Act). The charge in Case 23-CA-8519 was filed by the Union on June 2. On August 10, the Acting Regional Director issued an Order consolidating cases, amended consolidated complaint and notice of hearing in both cases. The consolidated complaint, as amended at the hearing,² alleges that Respondent committed certain violations of Section 8(a)(1) of the Act.

All parties have been afforded full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, the briefs filed on behalf of the parties, and my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a not-for-profit Texas corporation with its principal office located in Beaumont, Texas, where it is engaged in providing medical, nursing, and personal care to elderly and disabled persons. The parties agree that Respondent is a health care institution within the meaning of Section 2(14) of the Act.

During the 12 months preceding issuance of the complaint, Respondent received gross revenues in excess of \$100,000 from the operation of its health care facility. Accordingly, Respondent admits and I find that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Statement of the Facts*

Respondent's geriatric center is a 396-bed facility, devoted to the provision of nursing and environmental support primarily for geriatric patients. The center has a few acute care patients but most of its patients are long-term patients who are unlikely to regain the ability to lead independent lives due to their advanced ages. Respondent strives to make the patients feel that the facility is their home. The patients are referred to as residents. Most of the residents are ambulatory and are allowed and encouraged to roam around the entire facility.

On March 18, the Union filed a petition in Case 23-RC-4974, seeking to represent certain employees of Respondent. On April 8, a representation hearing was held under the auspices of the Regional Director for Region 23 of the Board. On May 6, the Regional Director issued a Decision and Direction of Election. An election was

¹ All dates hereinafter refer to the year 1981, unless otherwise stated.

² At the hearing, counsel for the General Counsel withdrew two allegations of the consolidated complaint.

then held on May 28.³ However, the ballots were impounded and not counted, as a timely request for review of the Director's Decision had been filed and was still pending before the Board as of the date of the instant hearing.

During the organizational campaign, shortly after April 1, Respondent distributed two documents to employees along with their paychecks. The first of these documents was a copy of a letter, dated March 27, from the Union to Respondent notifying Respondent that seven named employees comprised the Union's in-hospital organizing committee. The second document was a memorandum to all employees from R. W. Patterson, Respondent's director, concerning union activity. The General Counsel contends that the no-solicitation/no-distribution policies of Respondent as set forth in Patterson's memorandum to employees violated Section 8(a)(1) of the Act. The pertinent portions of the memorandum are as follows:

The following rules have been established by Law and Schlesinger Policy and will apply to all employees during the election campaign.

1. Employees have the right to discuss organizing the SEIU any time on the job as long as it doesn't interfere with work.
2. Employees have the right to solicit other employees to join the SEIU if they and the other employees are on non-working time so long as it is not in an immediate patient care area such as patient rooms and places where patients receive treatments such as therapy areas.
3. Employees may not distribute union literature on the Center's property because the Personnel Policies state "No solicitors, bill collectors, distributors of literature or salesmen are allowed in Schlesinger Center to contact residents or employees without the permission of the administrator. If an employee observes such activity occurring [sic], the administrator should be called immediately. Similarly, employees are not permitted to solicit funds, sell articles or in a like manner interrupt fellow employees when on duty or during rest periods."
4. Off duty employees may *not* attempt to organize the SEIU on outside Center property, like parking lots or inside in non-work areas because the Personnel Policies state "Employees should not loiter around the buildings or grounds when not on duty or receive visitors while they are on duty. This practice is distracting to those working and to the residents."

³ The election was held in the following unit of employees:

Included: All technical employees, occupational therapists, licensed vocational nurses, the EKG inhalation and x-ray technicians, occupational therapist aides, technical nurses aides, medication aides, medical records clerks, physical therapists, dietary assistants, cooks, housekeeping, laundry, social services and maintenance employees.

Excluded: All other employees, guards, watchmen and supervisors, as defined in the Act.

Since we will all be working together after the election is over, it is not in anyone's best interest to allow themselves [sic] to be placed in situations that cause them to violate the rules governing an election campaign. The rules must and will be enforced to insure that everyone is treated fairly.

Patterson testified that the quotations in points 3 and 4 of his memorandum are taken from Respondent's booklet entitled "Personnel Policies" which has been in use at the geriatric center for many years. Patterson further testified that no literature may be distributed within the facilities of the geriatric center. Solicitors are allowed if the express purpose is made known to administrators of the geriatric center and steps are taken to see that residents are not disturbed. The administrators did grant permission for solicitation for the community fund, flowers for employees, and emergency monetary needs of employees. Patterson testified the purpose of the rule is as follows:

We have 396 disabled and disadvantaged people who are treated in a home-like atmosphere. They are free to roam the facilities, any office, any areas of activity that they choose to. These people must be protected from outside solicitation of any kind. There must always be maintained a gentle [sic] atmosphere, which is conducive to their psychological and physical well-being. Any disruption to that is detrimental to our patients. And that's why the no-solicitation rule has always been in effect in that type of facility.

Christine Boughter, Respondent's director of nurses, testified that solicitations are not allowed and that the rules against solicitations are strictly enforced. Boughter testified that many of the patients do not have enough money and that Respondent did not want the patients embarrassed. Further, Respondent did not want the patients buying anything that would be harmful to their health; e.g., diabetics buying candy. Boughter noted that many of the patients suffer from declined abilities to take care of their own affairs.

In April, Patterson, believing that the Union was disseminating false information at its organizational meetings, decided to attempt to form an employee committee to disseminate more information about the Union prior to the election. Patterson believed that a committee of employees would have more credibility than Respondent itself. Patterson testified that he requested each of his department heads to submit the name of an employee who: had above average intelligence; was courageous; and had the respect of his/her peers. On May 3 or 4, Patterson called a meeting of the eight employees whose names had been submitted to him by the department heads. Patterson showed the employees a film entitled "Margaret." Thereafter, Patterson told the employees that he did not know whether they were prounion or antiunion and that did not matter. He said "a very small number of people had been exposed to a great number of falsehoods and that the majority of the people would have to vote. In order to do that, all of our employees deserve to be

given information with the Union, which the Union had withheld from them."⁴ He said he needed a group of employees who had the respect of their peers to distribute documents of the Union to the employees before the election. Patterson read the Union's constitution and bylaws with the employees and a copy of the Union's collective-bargaining agreement with Baptist Hospital, a nearby hospital. The employees said that they could form a committee and disseminate the materials to employees. Deanna Feagin, an X-ray and EKG technician, was elected to chair the committee. Patterson then left and the committee continued to meet. Several times during this meeting, Patterson told the employees that they were free to participate or not and were free to leave the room. Nobody left the room. The committee became the Schlesinger Geriatric Center Employee Information Committee (herein called the committee).

On May 5, Feagin wrote Marie McDaniel, then Respondent's administrator,⁵ requesting "permission to post meeting schedules in all units and in all departments [and] requesting the use of the All-Faiths Chapel in which to hold our open meetings [and] request permission to ask other employees to join our committee." McDaniel granted Feagin written permission to conduct the above-described activities, reminding Feagin that the activities were to be conducted so as to "insulate the patients and their visitors from any activity which might produce tension."

The committee then held meetings for employees in Respondent's chapel.⁶ Notices were posted for the meetings and Feagin used the center's intercom system to call employees to the meetings.⁷ Members of the committee were paid for their time spent at the meetings with Patterson. However, it is not clear from the record whether employees were paid for their time at the other meetings. At least one member of the committee, Johnnie White, was relieved of certain of her regular duties in order to attend meetings of the committee. The committee passed out information regarding the Union, including copies of anonymous threatening notes received by three members of the committee during the organizational drive. Feagin used a copying machine at the center to make the copies. It appears that the Committee has not engaged in any activities since the election.

Feagin and Patterson both testified that the purpose of the committee was simply to disseminate information about the Union, not to take sides. However, it is clear the committee campaigned against the Union. For example, in its first notice to employees, the committee stated "We have reached a personal decision that this union is *not* in the best interest of us as employees, of Schlesingers as an employer and of the patients that we care for. We do not feel that this union can do anything for us as employees that we cannot do for ourselves, and that as outsiders they will disrupt everyone involved." A further

example of the committee's campaign against the Union is the distribution of the anonymous threatening notes.

B. Contentions of the Parties

The General Counsel contends that Respondent's no-solicitation/no-distribution policies violate Section 8(a)(1) of the Act in two respects. First, that employees "may not distribute Union material at any time or any place" and second, that "off duty employees may not solicit fellow employees regarding the Union at any time or any place." Further, the General Counsel contends that the no-solicitation/no-distribution policies have been discriminatorily applied by permitting distributions and solicitations of the committee while prohibiting the same conduct by supporters of the Union. The General Counsel also argues that Respondent violated Section 8(a)(1) of the Act by forming the Employee Information Committee and providing assistance to the committee. Finally, the General Counsel alleges that Patterson violated Section 8(a)(1) of the Act by creating the impression of surveillance of employees' union activities, at the first meeting of the committee, by telling employees that Respondent knew that not all the employees had attended the Union's meetings and that employees had not received all the information about the Union.

Respondent denies the commission of any unfair labor practices. Respondent contends that it did not prohibit all solicitations and distributions but rather "it only required that the employees take the time to present to the administration their cognition of the need to insulate such activity from the patients." With regard to the committee, Respondent contends "that no restraint or coercion was present and that employee participation was voluntary." Further, Respondent argues that Patterson's remarks to the committee were "permissible argument or opinion within the meaning of Section 8(c) of the Act." Finally, Respondent contends that its no-solicitation/no-distribution rules were not breached by the conduct of the committee and that prounion employees could have engaged in similar activities had they just requested permission.

C. Analysis and Conclusions

1. The ban on distributions

The Board has held that restrictions on employee solicitations during nonworking time, and on distribution during nonworking time in nonworking areas, are violative of Section 8(a)(1) unless the employer justifies them by a showing of special circumstances which make the rule necessary to maintain production or discipline. *Beth Israel Hospital v. N.L.R.B.*, 437 U.S. 483, 492-493 (1978). In *St. John's Hospital and School of Nursing, Inc.*, 222 NLRB 1150 (1976), the Board held that the special characteristics of hospitals justify different standards for no-solicitation and no-distribution rules than those applied to other employers. In hospital areas other than immediate patient care areas, the Board held that solicitations should be permitted and that employer prohibitions would be presumed unlawful absent a showing that disruption of patient care or disturbance of patients would

⁴ Patterson wished to counter charges that the geriatric center was not a nonprofit organization and charges that he made substantial profits from the geriatric center. As discussed above, Patterson also wished to publicize certain facts about the Union.

⁵ McDaniel has since retired.

⁶ The chapel is in a building separate from patient care areas.

⁷ Presumably, patients could hear Feagin's voice over the intercom system.

result. This hospital standard was approved by the United States Supreme Court in *Beth Israel Hospital, supra*. However, in *N.L.R.B. v. Baptist Hospital, Inc.*, 442 U.S. 773, 790, fn. 16 (1979), the Supreme Court admonished the Board:

In discharging its responsibility for administration of the Act, the Board must frame its rules and administer them with careful attention to the wide variety of activities within the modern hospital. The Union, and other labor organizations involved before the Board in cases similar to the present one, have adopted this view, urging the Board to abandon the simplistic "immediate patient care" criterion.

In this case, upon learning of the Union's organizational drive, Patterson sent all employees a letter stating "Employees may not distribute union literature on the Center's property because the Personnel Policies state" As I interpret Patterson's letter, employees are prohibited from distributing union literature at any time and at any place. Thus, distribution is prohibited even when conducted during nonworking time in nonworking/nonpatient care areas. Consistent with *Beth Israel* and *Baptist Hospital*, I find such a broad prohibition to be presumptively invalid.

As stated earlier, Respondent argues that distributions were not strictly prohibited and that prounion employees need only had assured administration that the patients would be insulated from such activities. That argument cannot be accepted. First, the plain language of Patterson's letter indicates that union literature could not be distributed because of the rule. Thus, the letter denied permission to distribute union literature, in advance. Second, even if the language were unclear or ambiguous, an ambiguity which may be interpreted by employees in such a way as to cause them to refrain from exercising their statutory rights makes the rule invalid. *Solo Cup Company*, 144 NLRB 1481 (1963); *Presbyterian/St. Luke's Medical Center*, 258 NLRB 93 (1981). Third, both Patterson and Boughter testified that the rule meant that no material could be distributed on the grounds of the geriatric center. Finally, requiring an employee to seek permission before engaging in activity protected by the Act tends to give some pause to prudent employees wishing to engage in union activities. Cf. *Gulf Envelope Company*, 256 NLRB 320 (1981).

As stated above, I find Respondent's broad prohibition of distribution to be presumptively invalid. Under *Baptist Hospital*, Respondent may overcome the presumption by showing that distribution is likely either to disrupt patient care or disturb patients. Respondent has offered insufficient evidence of potential disturbance of patients to justify forbidding distribution in the parking lots and other outside areas. These areas are not used by patients *qua* patients, but rather as patients who as a result of their ambulatory circumstances seek a diversion. Cf. *Presbyterian/St. Luke's Medical Center, supra*. Although residents do walk throughout the center's grounds, it is inconceivable that they spend any significant amount of time in the parking lots. By no stretch of the imagination

can such areas be considered extensions of patient care areas. Further, the rule could be written so as to forbid distribution to nonemployees and/or to require face-to-face distributions. See *Beth Israel Hospital, supra* at 503-504, fn. 23.

Most importantly, Respondent's purported justification for an absolute ban on distribution is minimized by its condonation of distributions of material by the committee. Respondent furnished the committee with written material concerning the Union with full knowledge that such material would be disseminated to employees. There is no basis to believe that the threatening notes, union constitution and bylaws, and other material distributed by the committee would be less disturbing to patients than union literature. Respondent apparently argues that the committee took care to isolate the patients, but such care could also be exercised by union adherents. Further, Respondent could write into the rule the same condition of isolating patients from such activities, as was written in the permission granted to the committee. Accordingly, I find Respondent's restriction on the distribution of union literature to be overly broad and discriminatorily enforced in violation of Section 8(a)(1) of the Act.

2. The ban on loitering

It is settled law that a rule which denies off-duty employees entry to outside nonworking areas is invalid unless justified by valid business considerations. *The Presbyterian Medical Center*, 227 NLRB 904, 905 (1977); *Eastern Maine Medical Center*, 253 NLRB 224, 241 (1980). With regard to inside areas, a no-access rule must be clearly disseminated to all employees and apply to off-duty employees seeking access for any purpose. *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976); *Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital*, 255 NLRB 468 (1981). Any ambiguity is to be construed against the party which promulgates the rule. *Eastern Maine Medical Center, supra*; *Continental Bus System, Inc.*, 229 NLRB 1262 (1977).

In the instant case, Patterson notified employees that "Off duty employees may *not* attempt to organize the SEIU on outside Center property, like parking lots or inside in non-work areas because the Personnel Policies state" The justification for extension of this rule to the outside property is presumably the availability of outside property to the residents. As stated earlier, the purported justification for prohibiting employees from solicitation or distribution in the parking lots does not withstand scrutiny. Further, activities could be conducted in such a manner as to insulate the residents. Most importantly, the rule was discriminatorily applied to permit off-duty employees to engage in activities on behalf of the committee or to attend committee meetings while prohibiting off-duty employees from engaging in union activities.

The committee held four meetings at the geriatric center. Off-duty employees must have attended these meetings. If the only employees attending the meetings were on duty, Respondent permitted services to the patients to be ignored for the purpose of committee meet-

ings. I cannot believe this happened. Hence, a majority of the employees at the committee meetings must have been off-duty employees. Accordingly, I find that Respondent violated Section 8(a)(1) by promulgating and maintaining an overly broad rule denying access to off-duty employees and by discriminatorily applying such a rule to interfere with activities on behalf of the Union.

3. The formation of the Employee Information Committee

As discussed above, Patterson called a meeting of eight employees who had been selected by his department heads. Patterson said "all of the employees deserved to be given information with the Union, which the Union had withheld from them." He then said he needed a group of employees who had the respect of their peers to distribute documents of the Union to the employees before the election. Patterson remained in the room while the employees formed a committee and elected a chairperson. Such participation in suggesting, soliciting, and encouraging employees to form an antiunion committee constitutes unlawful interference with employees' Section 7 rights. Cf. *Idaho Falls Consolidated Hospitals, Inc.*, 257 NLRB 1045 (1981) (encouraging formation of an independent union); see also *Seneca Foods Corporation*, 244 NLRB 558, 563-564 (1979) (encouraging an antiunion petition); and *Weyerhaeuser Company*, 251 NLRB 574, 578 (1980) (encouraging employees to campaign against the union).

No serious consideration need be given to Respondent's contention that participation in the committee was strictly voluntary. While Patterson offered employees the opportunity to leave the meeting, an employee would be implicitly acting against Patterson by doing so. A prudent employee would be reluctant to take such action. In any event, employees were forced to make an open declaration for or against the Union. The situation is analogous to that of offering employees *Vote No* buttons and observing who accepts or rejects them—conduct which has been held unlawful. See, e.g., *Great Western Coca Cola Bottling Company, d/b/a Houston Coca Cola Bottling Company*, 256 NLRB 520 (1981); *Kurz-Kasch, Inc.*, 239 NLRB 1044 (1978).

4. The alleged impression of surveillance

An employer violates Section 8(a)(1) of the Act by making statements that lead employees reasonably to believe that their union activities are being watched. "[T]he furtive nature of snooping tends to demonstrate spectacularly the state of the employer's anxiety. From this the law reasons that when the employer either engages in surveillance or takes steps leading his employees to think it is going on, they are under the threat of economic coercion, retaliation, etc." *Hendrix Manufacturing Company, Inc. v. N.L.R.B.*, 321 F.2d 100, 104, fn. 7 (5th Cir. 1963).

As mentioned earlier, the General Counsel contends that Patterson created the impression of surveillance by telling employees that a small number of employees had been exposed to a great number of falsehoods and that the majority of the employees would have to vote in the

election. I do not find that such a statement implies that Respondent was keeping union meetings under surveillance. The source of such information need not have been surveillance because the Union had been actively campaigning at the geriatric center for over a month. Patterson's remarks appear to be casual criticism of the Union for campaign purposes. Patterson believed that the Union had falsely accused the geriatric center of being a profit-making institution and had falsely accused him of personally making substantial profits from the center. Patterson's remarks did not imply that Respondent was snooping or spying on union meetings. Clearly, Patterson could offer rebuttal to the Union's campaign statements so long as no promise of benefits or threat of reprisals was implied. The gravamen of Patterson's conduct was his participation in the formation of the committee. That conduct, found violative herein, will be the subject of a remedial order.

CONCLUSIONS OF LAW

1. Respondent, A. W. Schlesinger Geriatric Center, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. Service Employees International Union Local 706, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by: promulgating and discriminatorily enforcing an unlawfully broad no-distribution rule prohibiting distribution at any time or any place at its geriatric center; promulgating and discriminatorily enforcing an unlawfully broad rule denying access to off-duty employees; and suggesting, soliciting, and encouraging employees to form a committee to disseminate information and campaign against the Union.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Except as found above, Respondent has not engaged in other unfair labor practices as alleged.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I hereby issue the following recommended:

ORDER^a

The Respondent, A. W. Schlesinger Geriatric Center, Inc., Beaumont, Texas, its officers, agents, successors, and assigns, shall:

^a All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board.

Continued

1. Cease and desist from:

(a) Promulgating, maintaining, or discriminatorily enforcing any overly broad rule, prohibiting at any time or any place at the geriatric center the distribution of literature relating to matters involving the exercise by employees of their rights under Section 7 of the Act.

(b) Promulgating, maintaining, or discriminatorily enforcing any overly broad rule, prohibiting off-duty employees from solicitation or distribution relating to matters involving the exercise by employees of their rights under Section 7 of the Act.

(c) Suggesting, soliciting, or encouraging employees to form a committee to disseminate information about the Union or to campaign against the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the

rights guaranteed them under Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its Beaumont, Texas, facilities copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 23, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 23, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."